

Appln. No. 09/782,320

AMENDMENT AND ELECTION IN RESPONSE TO ELECTION OF SPECIES

REQUIREMENT

Docket No. BVL-102A

**REMARKS**

Claims 25-35, 37-43, 46-47, 50, 52-62, 64-71, 73, 75-76, 79, and 81-107 are pending herein. By this Amendment, Claim 25 is amended and new Claims 101-107 are added. Support for the new claims is found in the specification at, *inter alia*, page 12, lines 15-19. No new matter is added by this Amendment.

**I. PRESENT ELECTION OF SPECIES REQUIREMENTS**

Applicant's representative called Examiner Webman to request clarification of the election of species requirement. In a November 4, 2003 telephone interview, Examiner Webman indicated that he wanted Applicant to elect an additional matrix material in view of the recent amendment to Claim 79. In addition, Examiner Webman stated that his comments regarding a liquid or solid encapsulant were directed to pending Claims 93-94 and requested Applicant to choose one of those encapsulants for search and examination. Applicant hereby elects:

- (1) starch as the additional matrix material in Claim 79; and
- (2) a liquid encapsulant as recited in Claim 93.

**II. PREVIOUS RESTRICTION/ELECTION OF SPECIES**

Applicant respectfully notes that the previous elections are a probiotic nutraceutical component and a durum wheat plasticized matrix. The election of species requirement as to the hydrophobic component was withdrawn. Claims readable on the elected species are Claims 25-35, 37-42, 46, 50, 52-62, 64-70, 73, 75, 79, 81-89, and 91-93, and 95-107. Applicant respectfully asserts that withdrawn Claims 26, 41, 50, 53, 68, and 81-89 are generic to and readable on the elected species.

Once the generic claims are found allowable, Applicant respectfully notes that search and examination must continue as to a reasonable number of additional non-

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elected encapsulant and plasticized matrix material species, for example as recited in Claims 43, 47, 50, 71, 76, and 90. See MPEP 809.02(c).

Due to the numerous restriction requirements and election of species requirements in this application, Applicant respectfully requests Examiner Webman to telephone his representative if any other election issues arise in order to expedite prosecution and reduce Applicant's prosecution costs.

**III. SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

Applicant also notes that an electronic Information Disclosure Statement was filed on November 13, 2003 and requests that the references cited therein be made of record.

**IV. CONCLUSION**

In light of the foregoing remarks, this application should be in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this Election or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application.

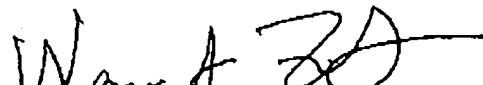
Please charge Deposit Account No. 501032 (Docket No. BVL-102A) in the amount of \$126.00 for extra claims fees.

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If there are any discrepancies in the fees, please charge or credit our Deposit  
Account No. 501032 (Docket No. BVL-102A).

Respectfully submitted,



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